

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1104 of 1991

with

Cri.Misc. Application No.5350 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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REKHABEN WIFE OF RAMESHWAR TRIVEDI

Versus

MR. RAJENDRA S/O RAMESHWAR TRIVEDI

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Appearance: in Cri.Revn.Appln.No.1104/91

MR RN MANSURI for Petitioners

SERVED for Respondent No. 1

UNSERVED for Respondent No. 2

Mr. Y.F.Mehta, APP for Respondent No. 3

Appearance in Cr.Misc.Appln.No. 5330/96

Ms. D.R.Kachhavah & T.M.Shaikh for the applicant

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 02/11/96

ORAL JUDGEMENT

Rekhaben wife of Rameshwar Trivedi has filed the

present revision application against the order of the learned Addl. City Sessions Judge, Ahmedabad in Cr. Revision Application no. 128/91 decided on 123.8.91.

2. The petitioners before this Court Rekhaben and Jalppa are admittedly step mother and step sister of the respondents nos 1 and 2. Present petitioners had filed Misc.Cri.Application No. 118/90 in the court of the learned Metropolitan Magistrate, Court no.9, Ahmedabad u/s 125 of the Cr.P.C. and that application was decided in their favour on 22.4.91. Against the said decision of the learned Magistrate, respondent no.1 had preferred cri.revision application no. 128/91 in the city Civil and Sessions Court, Ahmedabad and the learned Addl.City Sessions Judge allowed the said revision application and set aside the order passed by the learned Magistrate in favour of the present petitioners by holding that she being the step mother and as she is getting family pension, she is not entitled to claim and get maintenance under section 125 Cr.P.C.

3. Being aggrieved by the said decision of the learned Addl.City Sessions Judge, the original petitioners have come before this court . In view of the admitted position that the petitioner no.1 Rekhaben is the step mother of the original opponents Rajendra and Kundan, she cannot claim as of right u/s 125 maintenance in view of the decision of the Apex Court in the case of Kirtikant D.Vadodaria vs.State of Gujarat 1996(4)SCC 479. The learned Addl. Sessions has also further mentioned in para 3 of his order that the petitioners before this court are getting Rs. 745/- p.m. by way of family pension from 14.5.95 and before that they were getting Rs. 1,252/by way of family pension from 1.5.88 till 13.5.95. In view of the said finding recorded by the learned Addl. Sessions Judge that the petitioner no.1 is the step mother and petitioner no.2 is the step sister and that petitioner no.1 is already getting family pension it could not be said that the learned Addl. Sessions Judge has committed any illegality in allowing the said revision application and quashing the order passed by the learned Magistrate. It is vehemently argued by the learned advocate for the petitioner that one of the respondents has obtained a job in the office where the husband of the petitioner was working. But merely because he secures that job it cannot be said that he is liable to pay maintenance to the step mother. He got the said job on compassionate grounds on the death of

his father and merely because he obtained that job it cannot be said that, he is liable to pay maintenance to step mother u/s 125 Cr.P.C. If the respondents nos 1 and 2 have got in their possession any property which is capable of fetching any income then it would be open for the petitioners to come before the civil court for establishing their right of maintenance under the Hindu Adoption and Maintenance Act. Merely because they are denied maintenance under section 125 Cr.P.C., their right under general civil law could not be said to be forfeited. Thus I hold that present revision application will have to be dismissed. I accordingly dismiss the same. Rule discharged. Ad.interim relief granted earlier stands vacated.

In view of the disposal of the main petition Cri.misc.application no. 5350/96 is also disposed of.

(S.D.Pandit.J)